

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## GOVERNMENT ACCOUNTABILITY OFFICE

### 4 CFR Part 81

#### Public Availability of Government Accountability Office Records

**AGENCY:** Government Accountability Office.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed revisions would clarify procedures to obtain Government Accountability Office (GAO) documents. Published GAO documents such as testimonies, reports, and decisions are available to the public on GAO's Web site and also may be requested over the telephone. Their wide availability eliminates the need for regulations governing their request, and accordingly published GAO documents would no longer be subject to the procedures of this part under the proposed rule. The revisions would also clarify that records compiled for law enforcement purposes by another agency and records provided by GAO to another agency for law enforcement purposes are not subject to disclosure. The existing regulatory language on this point is imprecise. The proposed changes would add steps to the procedures for using GAO's public reading facility, to facilitate the efficient use of the facility. Finally, the proposed revisions would make various housekeeping changes reflecting shifts in GAO's operating procedures.

These proposed changes will clarify for the public which GAO documents are subject to this part and how to obtain such documents.

**DATES:** Comments must be received on or before January 10, 2011.

**ADDRESSES:** Address all comments concerning this proposed rule to Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street, NW., Washington, DC 20548; or e-mail, [bielec@gao.gov](mailto:bielec@gao.gov).

**FOR FURTHER INFORMATION CONTACT:** John A. Bielec, Assistant General Counsel, 202-512-2846.

**SUPPLEMENTARY INFORMATION:** GAO is not subject to the Administrative Procedure Act and accordingly is not required by law to seek comments before issuing a final rule. However, GAO has decided to invite interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. Application of the Administrative Procedure Act to GAO is not to be inferred from this invitation for comments.

GAO will consider all comments received on or before the closing date for comments. GAO may change the proposed revisions based on the comments received.

GAO proposes to amend paragraph (b) of section 81.1 to remove all published GAO documents, such as reports and decisions, from this part's purview. All such documents are publicly available on GAO's Web site, <http://www.gao.gov>, and may also be ordered over the telephone. Accordingly, regulations governing requests for public disclosure of such documents are unnecessary. It is also well-established that when an agency makes its documents widely available to the public, the agency need not reproduce those documents again in response to a Freedom of Information Act (FOIA) request. *Department of Justice v. Tax Analysts*, 492 U.S. 136, 152 (1989). While GAO is not subject to FOIA, the principle applies equally in this context.

Published GAO documents may be downloaded free of charge from GAO's Web site. Print copies may be ordered by telephone, but GAO charges a fee to print and ship documents requested this way. Under the proposed rule, GAO would no longer accept requests via fax or mail for published documents. Requests for GAO documents not available on GAO's Web site would remain subject to this part and would have to be submitted in writing to GAO, via either mail or e-mail, in accordance with section 81.4. Technical amendments to paragraphs (a) and (c) of section 81.1 are proposed as needed to conform with these changes.

Paragraph 81.6(g) would be amended to clarify the types of documents GAO considers to be compiled for law enforcement purposes. Such documents

are not subject to disclosure under this part.

Although GAO is not a law enforcement agency, it occasionally collects, during the course of its audits and investigations, records from law enforcement agencies that those agencies compiled for their own law enforcement purposes. While GAO did not compile the records, they are nonetheless exempt from disclosure because they were originally compiled for law enforcement purposes and may still be used for such purposes by the originating agency. Disclosure of such records would undermine the originating agency's law enforcement mission.

During the course of its work, GAO also occasionally receives information from non-law enforcement sources that indicates possible civil or criminal wrongdoing by another party. GAO forwards such information to other Federal, State or local agencies with enforcement jurisdiction over the matter. The receiving agencies may use the information for their own investigations, prosecutions, or other law enforcement matters. GAO considers such information to be compiled for law enforcement purposes if, at the time GAO receives a request under this part for the information, the receiving agency advises GAO that the information is being, or will be, used by that agency for a law enforcement purpose. In these circumstances, GAO's disclosure of the information could undermine law enforcement operations. "Law enforcement" in this context includes civil and administrative as well as criminal matters.

This policy is consistent with the United States Supreme Court's ruling that information not originally compiled for law enforcement purposes is nevertheless exempt from public disclosure if, at the time of a request, it is being used for law enforcement purposes. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153-55 (1989).

Section 81.8 would be amended to advise individuals who wish to use GAO's public reading facility to schedule an appointment and to have GAO's staff determine whether the records sought are included in the public reading facility collection.

Section 81.2 would be amended to clarify and identify the entity within GAO that administers this part. Section

81.4 would be amended to delete language that GAO records may be requested via a link on GAO's Web site. GAO will continue to accept requests for GAO records by e-mail. Paragraph (m) of section 81.6 would be amended to correctly identify the entity within GAO that operates GAO FraudNet.

#### List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Computer technology, Electronic products, Freedom of information, Public reading room, Requests for records.

For the reasons stated in the preamble, the Government Accountability Office proposes to amend 4 CFR part 81 as follows:

### PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

1. The authority citation for part 81 continues to read:

**Authority:** 31 U.S.C. 711.

2. Amend § 81.1 by revising the first sentence of paragraph (a), revising paragraph (b), and adding paragraph (c) to read as follows:

#### § 81.1 Purpose and scope of part.

(a) This part implements the policy of the U.S. Government Accountability Office (GAO) with respect to the public availability of GAO records, except as set forth in paragraph (b) of this section.

(b) GAO published testimonies, reports, decisions, special publications, or listings of publications are not included within the scope of this part. These documents may be obtained from the GAO Web site, <http://www.gao.gov>, or by telephone at 202-512-6000, TDD 202-512-2537, or 1-866-801-7077 (toll free). These publications may be downloaded free of charge from the GAO Web site. Paper copies requested from GAO are subject to a printing, shipping, and handling fee.

(c) Requests for all other GAO records are within the scope of this part and should be submitted to GAO as directed in § 81.4(a).

3. Revise § 81.2 to read as follows:

#### § 81.2 Administration.

GAO's Chief Quality Officer administers this part and may promulgate such supplemental rules or regulations as may be necessary.

#### § 81.4 [Amended]

4. In § 81.4, remove the second sentence of paragraph (a).

5. Amend § 81.6 by revising paragraphs (g) and (m) to read as follows:

#### § 81.6 Records which may be exempt from disclosure.

\* \* \* \* \*

(g) Records compiled for law enforcement purposes that originate in another agency, or records provided by GAO to another agency for law enforcement purposes.

\* \* \* \* \*

(m) *Unsolicited records containing information submitted by any person to GAO in confidence.* Records obtained by the GAO Forensic Audits and Special Investigations (GAO FraudNet) are an example of records that could contain information covered by this exemption.

6. Amend § 81.8 by adding a new second sentence, and revising the last sentence as follows:

#### § 81.8 Public reading facility.

\* \* \* To determine if a record is part of the public reading facility collection and to schedule an appointment to visit the facility, contact the Library reference desk at 202-512-2585. The facility is open to the public from 8:30 a.m. to 4 p.m. except Saturdays, Sundays, and Federal holidays.

Lynn H. Gibson,

Acting General Counsel, U.S. Government Accountability Office.

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### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 59

[Doc. No. AMS-LS-10-0080]

#### Establishment of Negotiated Rulemaking Committee for Changes to Livestock Mandatory Reporting

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Establishment of Negotiated Rulemaking Committee.

**SUMMARY:** The U.S. Department of Agriculture, Agricultural Marketing Service (AMS) is announcing its intent to establish a Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee). The Committee will attempt to reach consensus on proposed language that AMS will publish as a proposed rule in the **Federal Register**. The Committee will include representatives of parties who would be affected by a final rule. AMS solicits

comments on this initiative and requests interested parties to nominate representatives for membership on the Committee.

**DATES:** Written comments and requests for membership must be received on or before December 27, 2010.

**ADDRESSES:** Comments may be submitted electronically at <http://www.regulations.gov>. Comments may also be sent to Michael Lynch, Chief; USDA, AMS, LS, LGMN Branch; 1400 Independence Ave., SW., Room 2619-S; Washington, DC 20250; Telephone number (202) 720-6231; or Fax (202) 690-3732.

Comments should reference docket number AMS-LS-10-0080 and note the date and page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at <http://www.regulations.gov>, or during regular business hours at the above address. All comments submitted in response to this document will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Michael Lynch, Chief; USDA, AMS, LS, LGMN Branch; 1400 Independence Ave., SW., Room 2619-S; Washington, DC 20250; Telephone number (202) 720-6231; or Fax (202) 690-3732.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 1, 2000, AMS published the final rule to implement the LMR program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act) (7 U.S.C. 1635-1636h) [65 FR 75464]. The purpose of the 1999 Act was to establish a program of information regarding the marketing of cattle, swine, lambs, and the products of such livestock that provides information that can be readily understood by producers; improves the price and supply reporting services of USDA; and encourages competition in the marketplace for livestock and livestock products.

The statutory authority for the program lapsed on September 30, 2005. At that time, AMS sent letters to all packers required to report under the 1999 Act, requesting they continue to submit information voluntarily. In October 2006, Congress enacted legislation to reauthorize the 1999 Act through September 30, 2010, and to amend the swine reporting requirements of the 1999 Act (Reauthorization Act)